IV. The Commission Should Maintain the Current System of Negotiated LEC-CMRS Interconnection Agreements in Lieu of Tariffs

LEC-to-CMRS interconnection arrangements should continue to be established on a contractual basis. The use of contracts permits CMRS providers to seek and obtain interconnection arrangements customized to meet their specific network requirements and business planning needs more easily and efficiently than they could under a tariff regime. The demand for flexibility in structuring interconnection arrangements will only increase as new technology evolves, creating a more diverse population of CMRS providers. The continued use of negotiated interconnection arrangements will allow LECs to respond to these new CMRS providers' specific needs rather than forcing them into interconnection arrangements designed to meet the needs of other CMRS providers.

A. Contracts Need Not Be Filed With the FCC

The Commission should not require interconnection carrier-to-carrier contracts to be filed. The Commission itself has determined that it has the authority to exempt carriers from filing such contracts.[57/] Formal and informal Commission oversight is sufficient to ensure that carrier negotiations result in interconnection arrangements that are fair and nondiscriminatory. The Commission's formal complaint process remains available to a CMRS provider that has difficulty obtaining a good faith agreement. Alternatively, that

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[57/] See Amendment of Sections 43.51, 43.52, 43.53, 43.54 and 43.74 of the Commission's Rules to Eliminate Certain Reporting Requirements, Report and Order, 1 FCC Rcd 933, 934 (1986).

provider may seek Commission staff's informal participation in ongoing negotiations.[58/] The adoption of Commission rules that require interconnection agreements to include a most favored nation clause[59/] would impose a self-enforcing mechanism to further discourage discriminatory arrangements.

In the event that the Commission believes some type of filing is warranted, it should require only that information necessary to provide a reasonable degree of protection to the public. Those requirements should ensure the preservation of the confidentiality of carrier specific information such as network design, number of trunks, etc. The needless public disclosure of confidential information would compromise the public benefits obtained from allowing the competitive marketplace to operate without unnecessary regulatory intervention. Interconnection tariff requirements similar to the contract-based tariff requirements established for interexchange carriers and nondominant carriers would provide sufficient protection[60/] in the event the Commission chooses to require a filing.

[58/] The Commission has relied on its complaint process to ensure that good faith negotiations are conducted between LECs and cellular carriers for establishing interconnection arrangements, and these carriers have indicated that they are satisfied with the current system. Policy Statement, 59 Rad.Reg.2d (P&F) 1275 (1986); Interconnection Order, 2 FCC Rcd at 2913. See also Notice at ¶¶ 104, 112, 114. The success of this process is further demonstrated by the relatively few complaints received by the Commission in connection with cellular/LEC interconnection arrangements. CMRS Second Report, 9 FCC Rcd at 1499.

[59/] See Notice at ¶ 119.

[60/] 47 C.F.R. § 61.55 (1993).

B. The Commission Should Take Steps to Avoid Federal-State Conflicts over Matters of Interconnection Rates

The Commission can and should take steps to ensure consistency between policies governing rates for interstate and intrastate LEC-to-CMRS interconnection. At a minimum, the Commission should declare that the principles of mutual compensation and "good faith" negotiations are applicable to intrastate as well as interstate traffic. Ensuring conformance with these principles regardless of jurisdiction will ensure the continued development of a seamless national wireless infrastructure.

The Commission has held that mutual compensation is a primary element of the reasonable interconnection that LECs must offer all CMRS providers.[61/] Unlike interconnection rates, the obligation to provide reasonable interconnection is not segregable between intrastate and interstate commercial mobile radio services. For this reason, and because state regulation in this instance "would negate the important federal purpose of ensuring CMRS interconnection to the interstate network," the Commission has preempted state and local regulation of LEC-to-CMRS interconnection matters other than rates.[62/] Like the other elements of reasonable interconnection, mutual compensation should not be limited to interstate interconnection arrangements. Just as there is a single set of rules to

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[61/] CMRS Second Report, 9 FCC Rcd at 1498.

[62/] Id. at 1497-98.

govern the physical requirements of interconnection, there must be uniform principles to govern the relationships between interconnecting carriers.[63/]

Additionally, the Commission retains the authority to preempt state policies governing the rates for LEC-to-CMRS interconnection that have the effect of precluding interconnection and thereby negating the Commission's requirement that LECs provide "reasonable and fair interconnection" for all commercial mobile radio services.[64/] Section 332(c) establishes a comprehensive framework aimed at ensuring uniform regulation of commercial mobile radio services. The Commission plainly has authority under this regime to require LECs to provide "reasonable and fair interconnection" and to define that obligation as the Commission sees fit to further the statutory objectives of promoting a seamless national wireless infrastructure.

V. Any Equal Access Obligations Adopted by the Commission Must be Applied on a Uniform Basis to All CMRS Providers

As the Commission has recognized,[65/] its tentative decision to impose equal access obligations must be implemented in conformance with the statutory objective of ensuring

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[63/] For the same reasons, the Commission should also clarify that the "good faith" standard governing negotiations between CMRS providers and LECs applies with respect to rates for intrastate interconnection as well as to terms and conditions. Ensuring conformance with this standard will ensure the continued development of a seamless national wireless infrastructure, without unduly interfering with state authority over intrastate interconnection rates.

[64/] CMRS Second Report, 9 FCC Rcd at 1498. See also Interconnection Order, 2 FCC Rcd at 2912 (recognizing Commission authority to preempt state rate regulation if it interferes with Federal interconnection policy).

[65/] See Notice at ¶¶ 2-3.

consistent regulatory treatment of like wireless services.[66] To that end, any equal access obligations imposed by the Commission must be applied uniformly to all CMRS providers.

Imposing equal access uniformly not only fulfills Congressional intent, it also best serves the Commission's goals of consumer choice and technological innovation.[67] By imposing consistent and simultaneous equal access obligations on all CMRS providers, the Commission can avoid the kind of regulatory gaming that can create inefficiencies, distort the marketplace, and unnecessarily divert investment resources. The Commission itself stated in the Notice that

> implementing an even-handed regulatory scheme under Section 332 would promote competition by refocusing competitors' efforts away from strategies in the regulatory arena and toward technological innovation, service quality, competitive pricing and responsiveness to consumer needs.[68]

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[66] See e.g., House Report at 259 (Section 332(c) amendments designed "to provide that services that provide equivalent mobile services are regulated in the same manner"); id. ("[T]he legislation establishes uniform rules to govern the offering of all commercial mobile services"); id. at 260 ("The Committee finds that the disparities in the current regulatory scheme could impede the continued growth and development of commercial mobile services and deny consumers the protections they need . . .").

[67] The application of equal access to all CMRS providers is not precluded by the three-year regulatory transition period granted by Congress to providers of private land mobile services. See Omnibus Budget Reconciliation Act of 1993, § 6002(c)(2)(B). As the Commission has recognized, the three-year transition period was designed simply to "ensure[s] an orderly transition for all reclassified private services." CMRS Second Report, 9 FCC Rcd at 1513. The transition period was not intended to shield providers of private mobile services from new requirements applicable to all similarly situated mobile service licensees, or to exacerbate the disparities between private and common carrier licensees that the legislation was enacted to correct. See e.g., House Report at 260.

[68] Notice at ¶ 2.

Conversely, the failure to adopt uniform equal access obligations likely would encourage the migration of commercial and competitive disputes between CMRS providers into the regulatory arena.

In the cellular context, the Commission contends that imposing equal access on cellular providers would have the benefits of increasing consumer choice, expanding network usage and investment, and spurring new services and technological innovation.[69/] Accordingly, the Commission has tentatively decided to apply equal access obligations to all cellular carriers.[70/] If, as the Commission believes, the benefits described above would be more broadly and expeditiously accomplished via the adoption of equal access obligations for cellular providers, then the Commission also should require that providers of competitive substitutes for cellular service make such options available to their subscribers. Indeed, the failure to require competitive providers of CMRS service to offer such benefits to their

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[69/] Id. at ¶¶ 36-38.

[70/] Id. at ¶ 42. The Notice speaks of imposing equal access on cellular "providers" for the benefit of cellular "customers." See id. Thus, the Commission apparently does not intend to distinguish between resellers of cellular service and facilities-based cellular carriers with respect to the imposition of equal access. It is entirely appropriate for all equal access obligations to be imposed consistently and uniformly among cellular providers, regardless of whether they own facilities. There is no technical, statutory or policy rationale for distinguishing between classes of cellular providers with respect to equal access. Permitting resellers to avoid providing their customers with equal access, however, would distort the market and provide them with an unfair competitive advantage.

customers would distort the market and impose disproportionate regulatory burdens on cellular carriers.[71/]

The arguments advanced against imposing uniform equal access obligations on all CMRS providers are unavailing. Nextel has suggested that SMR systems and wide-area SMRs should be exempted from equal access obligations because they do not control a bottleneck.[72/] The presence or absence of a bottleneck clearly is not dispositive in this instance, however, since cellular carriers also do not possess a bottleneck.[73/] Nextel also argues that because it is a start-up operation, compliance with equal access requirements would be especially burdensome.[74/] As the Commission itself has noted, however, the costs and burdens associated with equal access may be lower for start-up operations since there are no expenses or burdens associated with converting existing systems.[75/] It is far simpler to build equal access functionality into a network from the start, than it is to modify existing facilities to provide that capability. In any event, Nextel's "start-up" operation will

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[71/] The market distortions would be particularly acute with respect to commercial subscribers, the class of customers likely to be targeted by new entrants into the CMRS market. Those customers are likely to have the strongest demand for interexchange services. Thus, permitting some carriers to bundle CMRS and interexchange service by exempting them from equal access requirements could provide them with an undue advantage in the competition for commercial subscribers.

[72/] See Notice at ¶ 45.

[73/] See CMRS Second Report at 9 FCC Rcd at 1499 (cellular carriers do not exercise bottleneck control over essential facilities).

[74/] Notice at ¶ 45.

[75/] Id. at 46.

reportedly have access to spectrum covering 85% of the nation's population.[76] Such an entity will compete directly with cellular providers and should be subject to the same equal access requirements.[77]

VI. Implementation Of Equal Access Must Be Structured To Ensure Parity and Uniform Treatment Among All CMRS Providers

A. Timing And Process Of Equal Access Conversion

The Commission has tentatively concluded that conversion to equal access should be phased in according to an implementation timetable.[78] McCaw agrees that a phase-in period should be established, which should be uniformly applied to all classes of CMRS providers without regard to the size of the provider's customer base. As the Commission has noted, the conversion to equal access in the landline context "primarily involved development and installation of new software in the BOC end office switches."[79] Although there may be instances in which some providers would need to construct or substantially reconfigure switching hardware, equal access conversion in the CMRS marketplace largely will entail a

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[76] Wall Street Journal, Aug. 8, 1994, at A3. See also Owen Declaration at ¶ 43.

[77] Moreover, Nextel will apparently retain an affiliation with MCI. See e.g., "Nextel Equity Purchase Agreement With MCI Unravels But Discussions on Strategic Alliance Proceed," Mobile Phone News, Sept. 5, 1994 at 1. Particularly under those circumstances, application of equal access requirements is warranted.

[78] Notice at ¶ 54.

[79] Id. at ¶ 7; see also, United States v. AT&T, 552 F.Supp. 131, 232 (D.D.C. 1982), *aff'd sub nom* Maryland v. U.S., 460 U.S. 1001 (1983).

similar process of upgrading and deploying switching software.[80] Accordingly, there is little need to vary the conversion timetable according to a provider's service, size, or customer base. McCaw estimates that an 18-24 month period should offer most providers sufficient time to convert to equal access.[81]

In order to promote customer choice and competition in the provision of wireless interexchange services, McCaw agrees with the Commission that the process of equal access conversion must include presubscription and balloting rules.[82] The balloting and presubscription process proposed in the AT&T/McCaw consent decree provides a useful model that can easily be adapted for the broad CMRS market.

The Consent Decree provides that at least sixty days prior to a McCaw cellular system's conversion to equal access -- and at quarterly intervals thereafter -- all interexchange carriers must be provided with the names and addresses of that system's customers.[83] Under the decree, the initial round of balloting for a system's existing

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[80] See id. at ¶ 76 ("commenters indicate that software upgrades to MTSOs would permit them to offer equal access under most circumstances").

[81] The AT&T-McCaw Consent Decree provides for a 21-month implementation period. United States v. AT&T Corp. and McCaw Cellular Communications, Inc., Civ. Action No. 94-01555, U.S. Dept. of Justice Proposed Final Judgment, July 15, 1994, at IV.B. ("Consent Decree").

[82] Notice at ¶ 92.

[83] Consent Decree at IV.C; see also United States v. AT&T Corp. and McCaw Cellular Communications, Inc., Civil Action No. 94-01555, U.S. Dept. of Justice Competitive Impact Statement at 17 (August 5, 1944) ("Competitive Impact Statement").

customer base must occur within sixty days of conversion.[84] Any system customer failing to designate a presubscribed carrier under the balloting process may be allocated to participating carriers in proportion to the number of customers selecting each interexchange provider.[85] Thereafter, each new subscriber must choose an interexchange carrier, and long distance services will be blocked to any new customer who fails to designate an interexchange provider. Existing subscribers may be blocked or proportionately allocated among participating interexchange carriers.[86] It is anticipated that existing customers may be afforded more than one balloting opportunity prior to any allocation.[87]

The Consent Decree also provides that any customer lists or information provided by McCaw to AT&T for the purpose of marketing interexchange services must be provided to

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[84] Consent Decree at IV.B.3; see also Competitive Impact Statement at 17.

[85] The Commission has solicited comment on whether an allocation scheme is necessary, "given the differences between LECs and CMRS providers, and the absence of a relationship like that existing between AT&T and the BOCs before divestiture." Notice at ¶ 92. In the absence of an allocation scheme, CMRS providers themselves might be permitted to select interexchange carriers for customers who fail to presubscribe. The danger is that interexchange carriers might enter into special arrangements with CMRS providers in order to obtain a disproportionate share of customers who fail to presubscribe. Under such circumstances, the objectives and benefits of equal access identified by the Commission could be diminished in proportion to the number of subscribers whose interexchange carrier is selected for them. Accordingly, an allocation scheme is the most practical and reliable means of ensuring that the broadest range of subscribers can reap those benefits.

[86] Consent Decree at IV.B.3; see also Competitive Impact Statement at 17.

[87] Competitive Impact Statement at 17, n.6.

unaffiliated interexchange carriers at the same time and under the same terms.[88/] This provision is designed "to permit all interexchange carriers to have a meaningful opportunity to market their services" to McCaw customers.[89/] The Commission's rules should establish similar information-sharing arrangements, to ensure that long distances carriers with affiliate relationships or special arrangements with CMRS providers do not gain an unfair marketing advantage with respect to any CMRS provider's customer base.

B. Scope of Equal Access Obligation

1. Service Area Definition

The Commission recognizes that it must determine the geographic scope of local calling areas for CMRS providers.[90/] Local Access Transport Areas (LATAs) have traditionally been used as the demarcation point for equal access in both the landline and wireless contexts. Both the MFJ decree and the AT&T/McCaw Consent Decree generally rely upon LATAs to define the scope of the equal access requirements imposed upon BOC

[88/] The Consent Decree states that "A McCaw Cellular System shall not provide AT&T with information about a cellular customer's Interexchange Carrier or the customer's Cellular or Interexchange Service usage unless (a) the customer is already a customer of AT&T's Interexchange Services, and (b) the McCaw Cellular System provides other Interexchange Carriers with the same information concerning their customers at the same time and under the same terms." Consent Decree at IV.C (emphasis added).

[89/] Competitive Impact Statement at 17.

[90/] Notice at ¶ 56.

cellular companies and McCaw.[91] The Commission has noted that "other mobile providers, however, are not limited to providing wireless service within LATAs."[92]

At present, LATAs constitute the only feasible uniform local service area definition. Because McCaw and the RBOCs provide service to approximately 60% of all cellular customers,[93] a Commission decision to utilize a local service area definition other than LATAs -- such as Major Trading Areas (MTAs) or Metropolitan Statistical Areas (MSAs) -- would be inapplicable to carriers who currently provide the bulk of CMRS traffic.[94] As compared with MTAs, moreover, the use of LATAs would effectively give consumers a choice among carriers for a greater proportion of their outgoing calls.

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[91] The AT&T/McCaw decree defines "Local Cellular Service" as "the provision of Cellular Service between points within areas ('Local Cellular Service Areas') in which the Bell Operating Companies or their affiliates are authorized today, or hereafter become authorized, to provide cellular exchange services without any equal access obligation under the provisions of the MFJ, any orders entered under it, or any legislation that supersedes or modifies it, including generic orders that for the purposes of this Final Judgment shall be construed to apply to McCaw Cellular Systems as if such Cellular Systems were Bell Operating Companies' Cellular Systems...". Consent Decree at II.Q.

[92] Notice at ¶ 65.

[93] See Paul Kagan Associates, Wireless Telecom Investor, May 20, 1994, pp. 6-7.

[94] There are instances in which it has been determined to make economic and technical sense to permit the local service areas of some McCaw and BOC cellular systems to be extended beyond the geographic scope encompassed by a LATA. See e.g., United States v. Western Electric, 578 F.Supp. 643 (D.D.C. 1983); United States v. Western Electric, slip op. (D.D.C. January 28, 1987); United States v. Western Electric, slip op. (D.D.C. September 6, 1988); see also Consent Decree at II.Q; Competitive Impact Statement at 23. These specific exceptions to the LATA service area boundaries should be incorporated into the uniform local service area definition developed by the Commission in this proceeding. In addition, the Commission also could establish a waiver process that would permit CMRS providers under certain circumstances to extend local service area boundaries beyond LATAs.

It is critical for the Commission to establish a common service area definition for all CMRS providers. McCaw agrees with the Commission that the local service territory definition it adopts should not "impede[] service offerings of mobile carriers, especially for wide-area service."[95/] But there is no reason why a uniform service area definition would have a dampening effect on the type of services offered by mobile carriers. On the other hand, if local service area definitions vary among and between classes of CMRS providers, then carrier revenues and service offerings will be driven by the Commission's regulatory framework, rather than by market demand and competitive considerations. A CMRS provider afforded a broad local service area would have a proportionately larger share of local service revenues than a provider afforded a more restrictive local service area by the Commission's rules. This result would directly contravene the objectives of the amendments to Section 332.[96/]

2. Types of Interexchange Communications Covered

In determining the scope of the equal access obligation, the Commission also must decide whether any wireless interexchange calls should be excluded from the requirement because of technical or other considerations. McCaw submits that equal access is feasible for

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[95/] Notice at ¶ 66.

[96/] In addition, it will be much easier for the Commission to administer and enforce a common service area definition, than it would be to enforce equal access obligations which vary in scope. The fact that many CMRS providers are -- or will be -- licensed on an MTA- or MSA-wide basis does not raise any practical impediments to the use of LATAs as the service area boundary for equal access. The BOCs for example are granted state-wide licenses to provide local telephone service, and there have been no problems associated with subjecting intrastate interLATA calls to equal access requirements.

interexchange calls initiated by subscribers within their home systems, for calls forwarded by the home system to its subscribers roaming in foreign systems, and for calls initiated by roamers in a system using IS-41 signalling protocols. In addition, McCaw agrees with those commenters who have suggested that equal access is technically infeasible with respect to mobile calls which cross LATA boundaries while the call is in progress.[97/]

3. Cellular Digital Packet Data Services

The Commission should not apply equal access requirements to cellular digital packet data services ("CDPD").[98/] CDPD transmits packetized data from mobile locations to the Internet addresses, which may include value added data networks and nodes for various network and service provider applications. CDPD is an enhanced service rather than a telecommunications service. Because CDPD is not used to provide access to the public switched network, the imposition of equal access would be technically and economically inefficient, if it were possible at all.[99/] Accordingly, the transmission of CDPD services

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[97/] Notice at ¶ 74 ("According to Centel Cellular, equal access in the call hand-off scenario...is impossible because intersystem communications are currently too slow to enable a carrier to route the call to the customer's IXC of choice without dropping the call"); see also U.S. v. Western Electric Co., 1990-2 Trade Cases ¶ 69,177 (1990).

[98/] Notice at ¶ 76.

[99/] See Competitive Impact Statement at 21. The Consent Decree "permits McCaw to hand off cellular digital packet data transmissions . . . to interexchange carriers at centralized points." Id. As the Justice Department acknowledged,

> the transport cost for packetized data, especially that using the Internet Protocol, is small in comparison to other elements of the service, and, thus, this service could be economically justified more easily (in more locations) if providers did not need to implement switching or routing points in each Local Cellular Service Area. In

(continued...)

should be exempt from the Commission's equal access obligations, except in instances where it would not be technically and economically inefficient to transport such services via equal access.

C. Type of Interconnection and Access

The Commission has solicited comment on both the type of equal access interconnection offered by CMRS providers to interexchange carriers and the type of access that must be offered mobile carriers to their customers' presubscribed interexchange carrier (PIC).[100/] The Commission should require CMRS providers to offer their customers automatic "1+" access to their PIC. In addition, the Commission's rules should enable mobile services customers to access other interexchange carriers via access codes, such as 10XXX codes. Such codes, however, should not be a substitute for direct access to a customer's PIC.[101/]

[99/](...continued)
addition, since transport across the Internet does not involve distance-sensitive charges, it will not make any difference to users where their messages are transferred onto the Internet. Finally, the Internet protocol does not have any provision for indicating a customer's choice of access provider and thus it would make use of the CDPD service less convenient and probably more expensive for such users if they were required to include addressing for separate access providers in addition to the customary Internet address normally employed by such users.

Id. at 20-21.

[100/] Notice at ¶ 79 & 85.

[101/] Under the Consent Decree, McCaw must ensure that each "customer's originating interexchange communications will be routed automatically, without the use of any access codes (*i.e.*, on a 1+ basis), as well as to permit the customer to access other interexchange carriers by dialing the appropriate carrier identification code (*i.e.*, on a 10-XXX basis)." Competitive Impact Statement at 17.

Mobile service providers should offer equal access interconnection to interexchange carriers at non-discriminatory prices, terms and conditions. Similarly, the Commission's rules should prohibit CMRS providers from discriminating in favor of a particular interexchange carrier with respect to the provision of technical information about the system or new exchange access services.[102/] CMRS providers should be entitled to recover from interexchange carriers both the direct costs of providing equal access and interconnection, as well as a portion of network joint and common costs attributable to the provision of such interconnection, just a landline LECs do.

With respect to the type of interconnection offered, the Commission's rules should permit mobile carriers to provide interconnection via local exchange carrier access tandems. CMRS providers should not be forced to offer direct connection to its MTSOs in order to transmit interexchange calls.[103/] However, if a provider offers one interexchange carrier direct connection to its MTSOs, all other similar carriers seeking interconnection should be

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[102/] The Consent Decree states that McCaw is barred "from discriminating in favor of AT&T (a) in providing in a timely manner technical or other information about the Cellular System or its customers, (b) in the interconnection or use of the McCaw Cellular System's service and facilities or in the charges for each element of service, or (c) in the provision of new Exchange Access services and the planning for and construction or modification of facilities used to provide Exchange Access." Consent Decree at IV.D.2. The Decree also requires McCaw to provide 60 days notice to interexchange carriers before implementing any new service. Id. at IV.D.3.

[103/] Such a requirement could force CMRS providers that use multiple switches in a particular network to offer direct connections to each switch when it would be more efficient from the CMRS provider perspective to centralize all interexchange access at a LEC tandem serving all such mobile system switches. See also pp.____-____, supra. For the reasons stated above, the imposition of interconnection obligations in any form is unnecessary in light of market conditions. Id.

afforded the opportunity to obtain the same type of access.[104] Likewise, if dedicated links to MTSOs are available to one interexchange carrier for billing, routing, signalling and other services connected to the transmission of interexchange calls, then other long distance providers should have the opportunity to establish such connections for similar services.[105]

D. Marketing and Billing

In the Notice, the Commission noted that some commenters had suggested that joint market rules should be established to ensure that mobile services providers do not discriminate in favor of affiliated long distance carriers.[106] McCaw agrees that the Commission should establish rules that permit vertically-integrated mobile services providers to jointly market cellular, interexchange and other services, while at the same time prevent discrimination against unaffiliated carriers.

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[104] The Consent Decree states that "each McCaw Cellular System shall provide to all Interexchange Carriers Exchange Access on an unbundled basis that is equal in type, quality and price to that provided to AT&T. Each McCaw Cellular System shall allow access to MTSOs through switched connections by of local exchange carrier access tandems, and shall provide to the Interexchange Carrier dialed digits, automatic calling number identification and other information necessary to bill calls, answer supervision, carrier access codes and testing and maintenance of whatever facilities of the cellular system are used by Interexchange Carriers, regardless of whether any of these services are provided to AT&T." Consent Decree at IV.D.1.

[105] The Consent Decree provides that: "A McCaw Cellular System shall be required to offer to each unaffiliated Interexchange Carrier to establish dedicated access connections to MTSOs, to perform billing services on reasonable terms, to provide interexchange traffic routing services, provide customer location information for use in routing calls, and to perform other activities or functions for Interexchange Carriers in connection with the origination, routing, or termination of interexchange calls in the same manner as and on the same terms and conditions, including price, that those services, activities, or functions are provided to AT&T." Id.

[106] Notice at ¶¶ 89-90.

Under the Consent Decree, AT&T may jointly market McCaw's cellular service and its interexchange services, subject to certain safeguards. First, AT&T must inform actual or potential subscribers of their right to presubscribe to an alternative interexchange carrier of their choice. Second, AT&T cannot bundle local cellular and interexchange service, but must state the prices, terms, and rate plans for each item separately. Third, AT&T may not sell interexchange service at a price, term, or discount that is offered only if the customer obtains cellular service from McCaw. A similar restriction is imposed upon McCaw's ability to link its cellular prices to a customer's acquisition of interexchange service from AT&T.[107/]

The Commission also has sought comment on whether to establish rules governing billing arrangements between CMRS providers and interexchange carriers.[108/] Mobile carriers should not be compelled into providing actual billing services for interconnecting

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[107/] Consent Decree at IV.E.1; Competitive Impact Statement at 19-20. An exception to the unbundling requirements of the joint marketing restrictions states that "AT&T may, without separately stating the charges for interexchange service and terminating local cellular service, offer a 'calling party pays' service for calls made to a cellular telephone." Competitive Impact Statement at 20. AT&T may charge a single price for the interexchange portion of the call and the terminating airtime paid by the caller under two conditions. First, it cannot obtain the underlying cellular service at a favorable rate. Second, this rate must be disclosed to other interexchange carriers. Competitive Impact Statement at 20. The Justice Department notes that this arrangement "will allow a potentially useful new service to be provided while assuring that AT&T's competitors have a fair opportunity to compete with AT&T in providing this service." Id.

[108/] Notice at ¶ 99.

interexchange carriers.[109/] As the Commission has recognized, however, mobile carriers "may be the sole source of certain information necessary for the correct and accurate billing and collection of interexchange calls originating on their networks."[110/] Accordingly, CMRS providers should make available to interexchange carriers the information necessary to enable them to perform their own billing or contract it out to third parties.[111/]

Conclusion

For the reasons set forth herein, the imposition of interconnection obligations on CMRS providers is neither necessary nor desirable. It would provide no benefits to the public, while imposing significant costs and inefficiencies on the offering of commercial mobile radio services and the development of the national wireless infrastructure. Also as set forth herein, the Commission should apply equal access requirements uniformly to all CMRS providers.

[109/] The Commission has long held that billing is a competitive service, and has deregulated it. See Detariffing of Billing and Collection Services, 102 F.C.C.2d 1150 (1986).

[110/] Id. at ¶ 98.

[111/] See Competitive Impact Statement at 18. The Consent Decree provides that if McCaw "provides information to AT&T to allow it to bill its Interexchange Service customers for Cellular Service, it shall at each unaffiliated Interexchange Carrier's option provide sufficient information about the usage and charges for Cellular Service to other Interexchange Carriers to allow them to make commercially reasonable arrangements to bill their customer for Cellular Service." Consent Decree at IV.D.1.

Respectfully submitted,

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September 12, 1994

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of Telephone Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services	}	CC Docket No. 94-54 RM-8012

Declaration of Bruce M. Owen

I. Qualifications

1. I am an economist and president of Economists Incorporated, an economic consulting firm located at 1233 20th Street, N.W., Washington, D.C. 20036. I am also a visiting professor of economics at Stanford University's Washington, D.C. campus. I hold a Ph.D. in economics from Stanford University (1970) and a B.A. in economics from Williams College (1965). My fields of specialization are applied microeconomics and industrial organization, especially antitrust economics and regulation of industry. I have published a number of books and articles in these fields, including "*United States v. AT&T*: The Economic Issues" (with R. Noll, in J. Kwoka and L. White, eds., *The Antitrust Revolution*, Scott, Foresman, 2nd ed., 1994), *Video Economics* (with S. Wildman, Harvard University Press, 1992), and *The Regulation Game* (with R. Braeutigam, Ballinger, 1978). I have taught economics as a full-time member of the faculties of Duke University and Stanford University. From 1979 to 1981 I was the chief economist of the Antitrust Division of the United States Department of Justice. During 1971-1972 I was the chief economist of the White House Office of Telecommunications Policy. I have testified in a number of an-

titrust and regulatory proceedings, including ones relating to local exchange, interexchange, and cellular telephony as well as paging. A copy of my curriculum vitæ is attached to this declaration.

II. Introduction and Summary

2. I have been asked by counsel for McCaw Cellular Communications, Inc., to provide an economic analysis of the proposal by the Federal Communications Commission (Commission) to impose obligations on commercial mobile radio service (CMRS) providers to interconnect with other CMRS providers, CMRS resellers, and private mobile radio service (PMRS) providers ("Notice of Proposed Rule Making and Notice of Inquiry," *In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, FCC 94-145, released July 1, 1994). I have also been asked to analyze proposals to regulate bundling of services sold by facilities-based CMRS providers to resellers.

3. In evaluating regulations, one should look not only at present conditions but at conditions during the time period in which the regulations are likely to be in effect. With this in mind, I have considered the structure of the market for mobile services over the coming three to five years as well as available evidence on recent market performance in evaluating the alleged benefits and the costs of interconnection and unbundling obligations. Based on my analysis, I have concluded that the Commission should not promulgate rules imposing interconnection obligations on CMRS providers.

4. *First*, the Commission has already found that "CMRS providers do not have control over bottleneck facilities" (*Second Report*, 9 FCC Rcd at ¶237). In the case of cellular carriers this conclusion is clearly correct: new CMRS systems do not need to interconnect with cellular networks (as opposed to the facilities of local exchange carriers (LECs)) in order to enter the mobile communications market successfully; and resellers do not need switch-based interconnections with cellular carriers in order to con-

tinue competing for retail customers. Thus, neither mandatory CMRS-to-CMRS interconnection nor mandatory switch-based interconnection with resellers can be justified by application of the essential facilities theory.

5. *Second*, no one has demonstrated that the presence today of only two cellular providers in each area has resulted in anticompetitive behavior, including denial of interconnections that would be in the interest of consumers. Without such a demonstration, no case can be made for the imposition of interconnection requirements on CMRS carriers. There is no sound reason to believe that CMRS providers will fail to reach interconnection agreements when such agreements are in the interest of consumers.

6. *Third*, additional CMRS providers will soon offer competitive cellular-like services. Because these new providers will initially require direct interconnection only with the landline segment of the public switched network, cellular carriers cannot impede their entry by denying them direct interconnection. As new CMRS providers establish themselves, any possibility that cellular carriers could acquire or exercise market power by denying direct interconnection is eliminated.

7. *Fourth*, the vast majority of traffic that will be handled by CMRS networks is either landline-to-mobile or mobile-to-landline, and for such traffic only direct interconnection with LEC facilities is required. Only as CMRS providers develop significant mobile-to-mobile traffic will it be efficient for them to interconnect directly with other mobile service carriers. When such interconnections are efficient, mobile service providers will have clear economic incentives to establish them, and no countervailing disincentives to do so.

8. *Fifth*, the existence of complaints by resellers who favor obligations on the part of facilities-based CMRS providers to offer switch-based interconnections to resellers and to unbundle the services provided to resellers is not evidence of anticompetitive behavior, as much antitrust law and commentary makes clear (Phillip Areeda and Herbert Hovenkamp, *An-*